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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

285

CRWP-8062-2023 (O&M)
Date of decision: 19.12.2025

Manik Dawar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Viren Jain, Advocate and
Ms. Jyoti Negi, Advocate
for respondent No. 4.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Articles 226/227 of the Constitution of India read with Section 482 of Cr.P.C. seeking issuance of writ in the nature of habeas corpus for obtaining the custody of his minor children, namely Vidhaan Dawar and Rehmat Dawar, who are alleged to be in illegal custody of respondents No. 4 to 6.

2. Shorn of unnecessary details, the brief facts of the case as per the petition and as argued by learned senior counsel for the petitioner are that the marriage of the petitioner with respondent No. 4, namely Vidhi Dawar, was solemnized on 13.02.2009 at Ludhiana according to Hindu rites and rituals. Out of the said wedlock, two children were born, namely a son, Vidhaan Dawar, on 03.03.2010 and a daughter, Rehmat Dawar, on 06.06.2015. The matrimonial life

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of the parties remained cordial till the year 2020. However, thereafter, the conduct of respondent No. 4 underwent a sudden change, and she started residing separately by sleeping in a different room from the petitioner. The petitioner got his son admitted in Woodstock School, Mussoorie in 6th Class but due to outbreak of Covid-19, the classes were being conducted online. In the month of June, 2021, respondent No. 4 along with the children had gone to his parental home and refused to come back. A panchayat was convened and only then she came back to her matrimonial home. It is further submitted that on 08.03.2022, the petitioner along with respondent No. 4 and their minor children travelled to Mussoorie for dropping their son, Vidhaan, at his school. After dropping the child, respondent No. 4 left with the minor daughter, Rehmat, on the pretext of visiting her parental home but thereafter neither returned to the matrimonial home nor permitted the petitioner to meet or interact with the minor daughter. Subsequently, respondent No. 4 continuously obstructed the petitioner from meeting and communicating with both minor children. Despite arrangements made through the school regarding custody during vacations, respondent No. 4, after taking Vidhaan during Summer vacation in May 2023, deliberately failed to send him back to school upon reopening. She further prevented all communication between the petitioner and the minor children and blocked the petitioner's contact and denied him access to the children even upon personal visits. She, without the consent of the petitioner, attempted to withdraw the minor son from his school, thereby adversely affecting his education. The same was objected to by the petitioner and kept in abeyance by the school authorities. The petitioner has at all times been actively involved in the upbringing, education, and welfare of the minor children. The conduct of

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respondent No. 4 is solely intended to alienate the children from the petitioner and to deprive them of paternal care and affection. The continued denial of access and communication is detrimental to the welfare and best interests of the minor children, warranting immediate intervention by this Hon'ble Court.

3. Learned senior counsel for the petitioner has further agued that respondent No. 4 has forcibly taken the custody of the minor children from the petitioner and the act of respondent No. 4 is not only illegal but also amounts to cruelty to the petitioner as well as children as they are of tender age and needed the care and company of father also for their proper upbringing. While submitting that the private respondents are mistreating the minor children and not maintaining them properly, it is urged that a writ of habeas corpus be issued for release of the alleged detainees. To fortify his argument, learned senior counsel for the petitioner has relied upon the authorities cited as ***Gautam Kumar Das vs. NCT of Delhi and others, 2024 SCC OnLine SC 2059, Nirmala vs. Kulwant Singh and others, 2024 SCC OnLine SC 758, Somprabha Rana and others vs. State of Madhya Pradesh and others, 2024 SCC OnLine SC 2415, Yashita Sahu vs. State of Rajasthan and others, 2020 SCC OnLine SC 50, Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, 2019 SCC OnLine SC 713, Veena Kapoor vs. Varinder Kumar Kapoor, 1981 SCC (Cri.) 650 and Rajwinder Kaur vs. State of Punjab and others, CRWP-11206-2023, decided on 04.01.2024.***

4. Learned State counsel has not chosen to address arguments in the matter.

5. Reply, on behalf of respondents No. 4 to 6, has been filed, wherein while denying the allegations as levelled by the petitioner, it is submitted that

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since respondent No. 4 is natural mother of the children, she cannot be stated to be in illegal custody of the children and the present petition is not maintainable. It is submitted that respondent No. 4 has never mistreated the children and rather, she is properly taking care of them, being their mother and is also discharging her responsibilities properly. The petitioner himself is a man of immoral acts. He is habitual of consuming drugs and is also involved in extra marital affairs. He has subjected respondent No. 4 to cruelty by raising demand of dowry and had also subjected her to unnatural sex. In this regard, respondent No. 4 had even got registered an FIR bearing No. 41 dated 14.09.2023, under Sections 394, 323, 34, 377, 406, 498-A and 506 of IPC at Women Police Station, District Sonipat. Even otherwise, he has alternative remedy for seeking custody of the children. It is, thus, argued that the petition is liable to be dismissed. To fortify his arguments, learned counsel for respondents No. 4 to 6 has relied upon the authorities cited as ***Mrs. Kanika Goel vs. State of Delhi through SHO and another : 2018 (3) RCR (Civil) 844, Somprabha Rana and ors. vs. State of Madhya Pradesh and ors. : 2024 INSC 664, Nirmala vs. Kulwant Singh and ors. : 2024 SCC Online SC 758, Anju Sharma vs. State of Haryana and other : 2024 NCPHHC 106868, Amandeep Kaur vs. State of Haryana and others : 2023 (1) RCR (Criminal) 47, Neelu Talotra vs. State of Punjab and ors.: 2024 (4) RCR (Civil) 451 and Lalit Mohan vs. State of Punjab and ors. : 2015 (4) RCR (Criminal) 72.***

6. This Court has heard the rival submissions.

7. Before proceeding further, it is worth mentioning that during the pendency of the present petition, the parties were referred to the Mediation and Conciliation Centre of this Court, whereupon, after several rounds of talks, though the dispute could not be resolved but an arrangement was made by this

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Court giving some visitation rights to the petitioner as an interim measure, which is still continuing.

8. Now coming to the facts of the case, the petitioner was married to respondent No. 4 on 13.02.2009 and out of the wedlock, one male child and one female child, who are alleged detenues, namely Vidhaan and Rehmat, were born on 03.03.2010 and 06.06.2015, respectively. Since the relationship between the parties turned sour, due to the reasons best known to them, they started living separately. As per allegations of the petitioner, respondent No.4 has forcibly taken the custody of the minor children and is not properly maintaining them. The question that arises before this Court for consideration is as to whether the custody of the minor children with respondent No. 4 can be stated to be illegal, warranting issuance of a writ in the nature of habeas corpus directing their release from her custody?

9. No doubt, this Court while dealing with a petition for issuance of a writ of habeas corpus with regard to custody of a minor child may direct return of the child or decline to change the custody of the child, however, such decision must depend on the totality of the facts and circumstances of each case brought before the Court. A writ of habeas corpus in child custody matters can be invoked only in those cases where the person having the child is not entitled to his/her legal custody. In child custody matters remedy lies only under Guardianship and Wards Act and it cannot be bypassed by filing a habeas corpus petition unless the corpus of the child is in illegal or unauthorized custody. Reliance in this can be placed upon ***Pavan Kumar Kathuroju vs. State of Telangana, 2024 SCC OnLine SC 31***. Reliance can also be placed upon ***Nirmala***'s case (supra), wherein Hon'ble Supreme Court, while relying upon

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Yashita Sahu's case (supra), has held that the habeas corpus is a prerogative writ which is an extraordinary remedy and recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor is by a person who is not entitled to his legal custody and in child custody matters, the writ of habeas corpus is maintainable only where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law. Similar view was expressed by Hon'ble Supreme Court in *Rajeswari Chandrasekar Ganesh vs. State of Tamil Nadu and others* 2022 SCC OnLine SC 885.

10. Reference can also be made to authority cited as *Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr. : (2017) 8 SCC 454*, wherein Hon'ble Supreme Court has observed that in a habeas corpus petition, the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person/respondent named in the writ petition. In *Kanika Goel's* case (supra), Hon'ble Supreme Court was dealing with a case where a minor girl child had USA passport and had travelled to India on tenured Visa, which had expired. The child was with her biological mother. It was observed that it did not mean that she was in unlawful custody. The order of High Court directing the wife to return to USA along with minor daughter was set aside and it was directed that the custody of minor child would remain with the mother until she attained the majority or the Court of competent jurisdiction, trying issue of custody of minor child, ordered to the contrary. In *Anju Sharma's* case (supra), it was observed by this Court that in child custody matters, the power of

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High Court in granting writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act, as the case may be. In cases arising out of proceedings under the Guardians and Wards Act, the jurisdiction of the Court is determined by whether the minor ordinarily resides within the area on which the Court exercises such jurisdiction. What is important is the welfare of the child. In the writ Court rights are determined only on the basis of affidavits. Where the Court is of the view that a detailed inquiry is required, it may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil Court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction in a petition for habeas corpus.

11. In *Vasudha Shetty and others vs. Kiran V. Bhaskar and another* : **AIR 2022 SC 476**, it was observed that a writ Court, while dealing with the issue of habeas corpus, cannot direct a parent to leave India and to go abroad with the child. If such orders are passed against the wishes of the parent, it will offend his/her right to privacy. A parent has to be given an option to go abroad with the child. Now, in issue of custody of a minor, whether a petition seeking habeas corpus or in a custody petition, has to be decided on the touchstone of the principle that the welfare of the child is of paramount importance. In *Amandeep Kaur*'s case (supra), the mother of a minor child had filed a writ of habeas corpus seeking production of minor child and handing over custody as well as passport to her. The child was in custody of his father. He had not removed child in violation of any order passed by any competent authority. He was in custody

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of the child for a period of more than four years and three months before the petition seeking to invoke the writ of habeas for the purpose had been filed. It was observed that no circumstance alleged or urged in the petition indicates that there was any eminent danger to the life and liberty of the child. There was no *prima facie* material to establish as to how vesting of custody of child with the mother was in best interest of child as only ground urged was that the child was a citizen of Italy. It was held that the reasons cited by the mother for directly approaching the High Court instead of taking recourse to alternative efficacious remedy as per law did not fall within recognized exceptions by the Hon'ble Supreme Court through various judicial pronouncements and the writ petition filed by the mother was dismissed.

12. In the present case, there is no dispute about the fact that respondent No. 4 is the biological mother of alleged detenues, who were born out of the wedlock of the petitioner and respondent No. 4. Hence, it cannot be stated that their custody with respondent No. 4 is illegal in any manner. There is nothing on record to show that the petitioner, by virtue of a Court order, was either given custody of the children so that it can be stated that by separating the children from him, respondent No. 4 has defied the said order. The matter was even referred to Mediation Centre but no settlement could be arrived at. This Court had even an interaction with the children through VC and they did not appear to be interested in meeting the petitioner. They are stated to be living with their mother/respondent No. 4 and are studying in a good school.

13. So far as the ratio of law laid down in the judgments relied upon by the petitioner is concerned, the same is not disputed at all. However, in none of these authorities, the custody of the child/children was handed over to a natural

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guardian by taking it from another natural guardian. For instance, in ***Gautam Kumar Das***'s case (supra), the custody of the minor daughter was handed over to father, being natural guardian, by withdrawing her from the custody of her aunt (Massi). In ***Nirmala***'s case (supra), the custody of a minor child aged about 07 years was given by the High Court to the father but the Hon'ble Supreme Court had set aside the said order and it was observed that since a detailed enquiry including the welfare of the child and his preference would have been involved, such an exercise could be done only in a proceeding under the provisions of the Guardians and Wards Act, 1890. It was also observed that the High Court was not justified in entertaining the petition under Article 226 of the Constitution of India, whereby it had given the custody of the child to respondent/father.

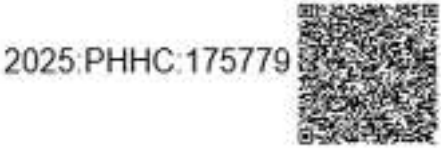
14. Similarly, in ***Somprabha Rana***'s case (supra), the custody of a 2 ½ years old child was with her aunts (Massis). In a petition filed under Section 226 of the Constitution, the High Court had handed over the custody of the child to her father. The aunts of the child approached the Hon'ble Supreme Court against the order of the High Court. The Hon'ble Supreme Court, while observing that when the Court deals with the issue of Habeas Corpus regarding a minor, the Court cannot treat the child as a movable property and transfer custody without even considering the impact of the disturbance of the custody on the child; such issues cannot be decided mechanically; the Court has to act based on humanitarian considerations, had set aside the order of the High Court and had restored the custody of the child to her aunts with some visitation rights to the father until they approach an appropriate forum and their claim regarding custody of the child stands decided. In ***Yashita Sahu***'s case (supra), the dispute qua custody of a child was between natural mother and father. The jurisdictional

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Court at Norfolk, USA had granted joint custody of the child to both of them but the mother, in defiance of that order, travelled to India with the child and it was in that background that the Hon'ble Supreme Court had issued detailed directions to the parties with a conditional direction that in case the wife did not inform the counsel for the husband within one week from today that she was willing to go back to USA then it would be presumed that she had no intention to go to USA along with the child and in that event, the custody of the child would be given to father with certain visitation rights to the mother. In ***Tejaswini Gaud***'s case (supra), the mother of a minor child had died. Her father also fell seriously ill for a long time and during interregnum, the custody of the child was with her aunts (Massis). When the father recovered from his illness, he sought custody of the child but was denied the same. The High Court, in a petition filed under Section 226 of the Constitution, restored the custody of the child to the father. The aunts of the child approached Hon'ble Supreme Court against the same but the order of the High Court was affirmed and the custody of the child was ordered to be given to the father.

15. In ***Veena Kapoor***'s case (supra), no conclusive directions have been issued regarding handing over custody of the child by taking it from one natural guardian to another. So far as ***Rajwinder Kaur***'s (supra) is concerned, the same also does not apply to the present case at all as the prayer of the mother for handing over the custody of the minor child by taking it from father and grandparents was declined. Hence, it can conclusively be said that the ratio of law laid down in the authorities does not help the petitioner at all to make out a case for handing over the custody of the alleged detainee to him by withdrawing them from their mother/respondent No. 4.



16. In view of the discussion as made above and without making any comment on the allegations and counter allegations made by the parties against each other, this Court is of the view that no case has been made out by the petitioner to issue any direction to the private respondents for handing over the custody of the children to him. Accordingly, the present is dismissed, being devoid of any merit.

17. However, liberty is granted to the petitioner to avail his alternative remedy in accordance with law, if so advised.

18. Till the time the claim of the parties regarding custody of the children is decided by the appropriate forum, the petitioner shall continue to have the visitation rights as arranged during the pendency of this petition.

19.12.2025

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No